



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2021-0304; FRL-10023-23-OGC]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Center for Biological Diversity v. Regan*, No. 3:20-cv-06020-WHA (N.D. Cal.). On August 27, 2020, Plaintiffs Center for Biological Diversity and Center for Environmental Health (collectively, Plaintiffs) filed a complaint in the United States District Court for the Northern District of California, San Francisco Division. On January 22, 2021, Plaintiffs filed an amended complaint. Plaintiffs alleged that the Environmental Protection Agency (EPA or the Agency) failed to perform certain non-discretionary duties in accordance with the Act to timely respond to numerous state implementation plan (SIP) and control techniques guideline (CTG) submissions from the State of California and State of Colorado and to timely issue a federal implementation plan (FIP) to address specific CAA requirements for one particular area within California. The proposed consent decree would establish deadlines for EPA to act on certain submissions or, as an alternative for one area in California, to issue a FIP.

**DATES:** Written comments on the proposed consent decree must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2021-0304, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional

information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand-deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Pettit, Air and Radiation Law Office (7313K), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone (202) 566-2879; email address [pettit.elizabeth@epa.gov](mailto:pettit.elizabeth@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Obtaining a Copy of the Proposed Consent Decree**

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2021-0304) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number

then select “search.”

## **II. Additional Information about the Proposed Consent Decree**

The proposed consent decree would establish deadlines for EPA to take action pursuant to CAA section 110(k) on certain SIP submissions by the State of California and State of Colorado, or, as an alternative for one area in California, to issue a FIP. First, on November 15, 2016, the State of California made a SIP submission to EPA intended as a revision to the Mendocino County Air Quality Management District portion of the California SIP. EPA issued a limited disapproval and limited approval of the permitting rule, Rule 1-220, New Source Review Standards, on July 3, 2017 (82 FR 30770). The proposed consent decree would require EPA to correct deficiencies from the limited disapproval by taking action to approve a SIP submission, promulgate a FIP, or issue a combination of a partial SIP approval and partial FIP by December 15, 2021.

Second, on August 9, 2017, October 25, 2017, and May 23, 2018, California made three SIP submissions or revisions for the Eastern Kern (Kern County), California nonattainment area for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The proposed consent decree would require EPA to take action on certain elements of the three submissions by December 15, 2021, February 18, 2022, and December 15, 2022.

Third, on May 31, 2017 and May 8, 2019, Colorado made SIP submissions for the Denver Metro/North Front Range, Colorado nonattainment area for the 2008 ozone NAAQS. The proposed consent decree would require EPA to take action on certain elements of the submissions by February 15, 2023.

Fourth, on December 7, 2018, California made a SIP submission for the Nevada County (Western part), California nonattainment area portion of the California SIP for the 2008 ozone NAAQS. The proposed consent decree would require EPA to take action on certain elements of the submission by March 31, 2022.

Fifth, on April 27, 2017 and May 5, 2017, California made SIP submissions for the Riverside County (Coachella Valley planning area), California nonattainment area portion of the California SIP for the 2008 ozone NAAQS. The proposed consent decree would require EPA to take action on certain elements of the submissions by September 30, 2022.

Additionally, during the pendency of this litigation, in the ordinary course of its administrative action, EPA has taken final action on some of the SIP submissions originally at issue in the litigation.<sup>1</sup>

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

### **III. Additional Information about Commenting on the Proposed Consent Decree**

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2021-0304, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

---

<sup>1</sup> See, for example, 86 FR 11125 (February 24, 2021).

<https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

**Gautam Srinivasan,**

*Associate General Counsel.*